

JAN 12 2016

JULIA C. DUDLEY, CLERK  
BY: *HMcD*  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
DANVILLE DIVISION

UNITED STATES OF AMERICA

Criminal Action No. 4:12-cr-00032-2

v.

ORDER

DAMIEN COURTNEY FITZGERALD

By: **Hon. Jackson L. Kiser**  
**Senior United States District Judge**

Petitioner Damien Courtney Fitzgerald filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, and the court appointed the Federal Public Defender to represent Petitioner pursuant to Standing Order 2015-5 because Johnson v. United States, \_\_\_ U.S. \_\_\_, 135 S. Ct. 2551 (2015), may affect Fitzgerald's sentence. Presently before me is the parties' joint motion to stay. For the following reasons, the motion to stay is granted.

Petitioner was sentenced as a career offender in accordance with United State Sentencing Guideline § 4B1.2. The language of the career offender guideline is similar to the language that the United States Supreme Court considered to be unconstitutionally vague in Johnson. In In re Creadell Hubbard, No. 15-0276, the Court of Appeals for the Fourth Circuit will determine, inter alia, whether Johnson voids the career offender guideline for vagueness. The resolution of In re Creadell Hubbard may control the outcome of Petitioner's § 2255 motion, and staying this matter will conserve court resources and promote efficiency and unity among courts. Accordingly, the motion to stay is **GRANTED**, this matter is **STAYED**, and Petitioner shall **NOTIFY** the court within fifteen days of the resolution of In re Creadell Hubbard.

It is so **ORDERED**.

Enter: This 12<sup>th</sup> day of January, 2016.

*Jackson L. Kiser*  
Senior United States District Judge